IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7227 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAMODKUMAR NATVARLAL MODI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7227 of 2002

MR HR PRAJAPATI for Petitioner No. 1

Mr.R.M. Chauhan, ASSISTANT GOVERNMENT PLEADER for Respondents no.1 to 3.

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 28/11/2002

ORAL JUDGEMENT

The present petition is filed challenging the order dated 12th July 2002 passed by the detaining

authority-- the District Magistrate, Surat under the provisions of Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the Act"). A copy of the said order dated 12.7.2002 is at Annexure 'A' and the grounds in support of the said order are produced at Annexure 'B' to the petition. The grounds run into as many as 34 pages, the documents in support thereof run into 1835 pages. The index of 1835 pages along with description of the documents is supplied which itself runs into 24 pages. The reason behind mentioning the number of pages totalling to 34 + 1835 + 24 is to highly the total amount spent in passing this one single detention order, besides innumerable man hours which are spent by the staff working under the detaining authority. Before the District Magistrate passes an order of detention, a proposal is put forward by the District Supplies Officer. He is assisted by Chief Supply Inspector who in turn is assisted by the Supply Inspectors. In the present case the order of detention is dated 12th July 2002 and as is stated in the grounds the order of detention was required to be passed against the detenu, the petitioner herein, because he was found to be an obstacle in the system, under which people living below poverty line, abbreviated as 'BPL' are supplied wheat, rice, sugar and kerosene (blue), the essential commodities, particularly for this strata of the society which does not get even two square meals a day. It is mentioned in the grounds of detention that this order was required to be passed so as to see that the petitioner detenu is restrained from continuing his activities, which are obstructing the supply of the aforesaid essential commodities. The nefarious activities of the petitioner detenu are enumerated in detail in the grounds of detention. The gist of the activities is that he siphons away the essential commodities which are otherwise meant to be distributed to this section of the society and earns profit. In the present case taking into consideration the communal riots in the State the Honourable the Prime Minister declared that the families belonging to the category of 'below poverty line' be supplied 9 KGs of wheat, 3.5 KGs of rice for the block of may 2002 to September 2002 and for the month of October 2002 5 KG of what and 2.5 KGs of rice, free of cost. The petitioner detenu having his shop in Katargam Zone of Surat city had 1279 ration cards of 'BPL' families.

2. There was a complaint received on 17.5.2002 from 'BPL' ration card holders -- in the zonal office that the shop keeper was not distributing the stock of wheat and

rice free of cost and was asking for a sum of Rs.25=00 for such supply. The shop of the petitioner was inspected by the Supply Inspector along with the Zonal Officer during which certain irregularities were noticed and therefore, the stock of kerosene (blue) of 100 liters was seized. It was also noticed that though it was recorded that certain card holders were supplied the aforesaid grains, the same were not received by them.

3. The petitioner was also found to have indulged in serious irregularities of making applications for new computerised ration cards of his own though the ration card holders had abandoned on account of their leaving the area. The petitioner got issued new computerised cards and was showing the distribution of the essential commodities on such bogus ration cards. In the grounds of detention after recording all these details in paras 4.1 to 4.23 it is recorded in para 5 that in view of the contents of paras 4.1 to 4.23 the petitioner is found guilty of having made false bills, having deducted the stock of such bills from the stock register, has sold the same in black market. It is also recorded in para 5 that thus, the petitioner is found guilty of the breach of the provisions of the Gujarat Essential Commodities (Licence, Control & Stock Declaration) Order, 1981, the provisions of Essential Commodities Act, 1955 and also the provisions of The Kerosene (Restriction on Use & Fixation of Ceiling Price) Order, 1993. What is material for the purpose of this petition is that in the said para the detaining authority has referred to an order passed by the District Supply Officer, Surat bearing No.Enfo/ Register 266/ 02, 284/02 dated 6.7.2002 and has mentioned that by the aforesaid order the licence of the fair price shop of the petitioner is suspended for a period of 90 days. It is also mentioned that the aforesaid order is at pages 1589 to 1595 of the compilation. It is also important that the detaining authority has recorded that against the aforesaid order the petitioner detenu can approach the competent court and can obtain a stay order and can continue his nefarious activities and therefore, 'suspending the licence' is not sufficient.

4. Mr.Prajapati, the learned advocate appearing for the petitioner-detenu submitted that in this regard he has taken a specific contention/ ground in the memo of petition, namely ground 4(l), which reads as under:

"4(l) The petitioner respectfully states that there is a total non application of mind on the part of the detaining authority in view of the fact that in the grounds of detention the

detaining authority has stated that the licence of the petitioner has been suspended by the order dated 6.7.2002 by the District Supply Officer, Surat for a period of 90 days but against such order, by obtaining stay from competent court, there are all possibilities that the petitioner may continue his activities. It is submitted that if one looks at the order dated 6.7.2002 supplied along with the grounds of detention, it is very clear that there is no order of suspension of licence has been passed by the District Supply Officer, but it is a order cancelling the agreement executed between the petitioner and the State Department for running the fair price shop. This shows total non application of mind on the part of the detaining authority and therefore, the order of detention is required to be quashed and set aside."

5. This petition was filed on 5.8.2002 and on 6.8.2002 this Court was pleased to issue rule and pass the following order:

"Rule. Learned AGP Mr.HH Patel is directed to waive service of notice of rule on behalf of respondent no.3. The Registry is directed to list this matter for final hearing in seriatum considering the date of detention order. Respondent no.4 be served through speed post with acknowledgment due at the costs of the petitioner."

Pursuant to this order the matter is listed for final disposal today.

6. The District Magistrate (Shri Manojkumar Das) has filed an affidavit in reply dated 20.9.2002. From the affidavit filed by the detaining authority it is clear that the authority has not taken any pain in filing the same. Though the petitioner raised various contention is challenging the order of detention, the affidavit in reply does not deal with them and reply to any of the grounds in right and true perspective. The contention raised by the petitioner in para 4(l) is replied by the detaining authority by para 12, which reads as under:

"12. With respect to the averments made in para 4(k) and (h) the same are denied. it is submitted that the order of detention is passed in view of the forgoing contentions stated above. It is denied that the order is passed without

application of mind. The order of detention is legal, just and proper. The petitioner disposed of such stocks for his personal gain."

The para seems to have a typographical mistake inasmuch as when it says with respect to the averments made in para 4(k) and (h), it transpires from the subsequent para that it replies para 4(k) and (l). It is shocking that the detaining authority has not taken trouble to read the contents of the said para 4(l). Otherwise, the authority would not have given such a vague and evasive reply. This shows how negligent the detaining authority is in filing the affidavit in reply to the petition challenging the order of detention. The Honourable Apex Court and various High Courts including this Court have time and again stated that the order of detention is a dot on a cultured society. A person is detained without trial and the only reason for which the validity of detention laws is upheld by the Court is that it is found to be inevitable in given set of circumstances to restrain a person from indulging in nefarious activities. Only because of validity of detention laws is upheld by the Honourable the Apex Court, it does not mean that the authorities can resort to the same in a casual manner and do not take trouble of reading the contents raised in the petition and reply the same. The person is deprived of his liberty without any trial, is very serious. This can be appreciated and understood only by the person who undergoes the tyranny. The detaining authority cannot be allowed to take such a casual approach in the matters of detention.

7. The Honourable the Apex Court while dealing with an order of detention passed under COFEPASA, which was challenged by the sister of the detenu praying that the detenu be released because the safeguards provided by the Constitution have not been complied with. The Honourable the Apex Court while deciding that case in the matter of Kamla Kanhaiyalal Khushalani v. State of Maharashtra, reported in A.I.R. 1981 SC 814 had an occasion to observe as under:

" 8. It is a matter of great concern and deep dismay that despite repeated warnings by this Court, the detaining authorities do not care to comply with the spirit and tenor of the constitutional safeguards contained in Art. 22(5) of the Constitution. It is manifest that when the detaining authority applies its mind to the documents and materials which form the basis of the detention, the same are indeed placed

> before it and there could be no difficulty in getting photostat copies of the documents and materials, referred to in the order of detention, prepared and attaching the same along with the grounds of detention, if the detaining authority is really serious in passing a valid order of detention. Unfortunately, the constitutional safeguards are not complied with, resulting in the orders of detention being set aside by the Court, even though on merits they might have been justified in suitable cases. We feel that it is high time that the Government should impress on the detaining authority the desirability of complying with the constitutional safeguards as adumbrated by the principles laid down in this regard. We would like to suggest that whenever a detention is struck down by the High Court or the Supreme Court, the detaining authority or the officers concerned who are associated with the preparation of the grounds of detention, must be held personally responsible and action should be taken against them for not complying with the constitutional requirements and safeguards (viz. delay in disposing of the representation, not supplying the documents and materials relied upon in the order of detention pari passu the order of detention, etc. etc.) or, at any rate, an explanation from the authorities concerned must be called for by the Central Government so that in future persons against whom serious acts of smuggling are alleged, do not go scot free. In the instant case, not only were the documents and materials not supplied along with the order of detention, but there has been a delay of about 25 days in disposing of the representation of the detenu and no explanation for the same has been given. These are matters which must be closely examined by the Government. (emphasis supplied)

8. In the present case the document is referred to in the grounds of detention in para 5 and after referring the document it is narrated as to what the document is about. When the document is perused, the same is found to be different than the narration contained in the grounds. Mr.Prajapati, the learned advocate is right in contending that the authority has not applied its mind and therefore, the order of detention is required to be quashed and set aside. It is further to be noted that besides the aforesaid act of non application of mind, the same is repeated by filing an affidavit in reply, when in the affidavit in reply the detaining authority did not

find time and did not care to read the contents of the petition to file its reply. The reply filed suggests that the same is filed with absolutely casual approach. Therefore, in light of the observations of the Honourable the Supreme Court, the Chief Secretary of the State of Gujarat is hereby directed to consider the mater and to decide to take necessary action against the detaining authority to see that in future such incidents are not repeated and report the same to this Court.

9. In view of the aforesaid discussion, this petition succeeds. The impugned order of detention dated 12th July 2002 is quashed and set aside. The detenu Pramodkumar Natvarlal Modi is ordered to be set at liberty forthwith, if is not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(Ravi R. Tripathi, J.)

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